RECORD AND BRIEFS

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# Supreme Court of the United States

CLIFTON E. YARBOROUGH, CHRISTOPHER D. TURNER, KELVIN D. SMITH, CHARLES S. TURNER, LEVY ROUSE, & TIMOTHY CATLETT,

*Petitioners,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Writ Of Certiorari To The District of Columbia Court Of Appeals**

## BRIEF OF THE INNOCENCE NETWORK AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## INTEREST OF *AMICUS CURIAE*[1]

The Innocence Network is an affiliation of organizations from around the world dedicated to providing pro bono legal and investigative services to individuals seeking to prove their innocence, and working to redress the causes of wrongful convictions. The sixty-seven current members of the Network represent hundreds of prisoners with innocence claims in all fifty states, the District of Columbia, and abroad.[2]

The Innocence Network and its members are dedicated to improving the accuracy and reliability of the criminal justice system. Drawing on lessons from cases in which innocent persons were convicted, the Innocence Network advocates study and reform designed to enhance the truth-seeking functions and procedures of the criminal justice system to ensure that future wrongful convictions are prevented.

The Innocence Network frequently files amicus briefs in cases raising important issues of criminal law, including the due process protections afforded by *Brady v. Maryland*, 373 U.S. 83 (1963). *See, e.g.*, *Smith v. Cain*, No. 10-8145 (U.S. 2011). In those briefs and elsewhere, the Innocence Network has emphasized the importance of interpreting *Brady*

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1 All parties have consented to the filing of this brief. *Amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The Mid-Atlantic Innocence Project, a member of the Innocence Network and co-counsel for a petitioner, has not made a monetary contribution intended to fund the preparation or submission of this brief.

2 The appendix lists the Innocence Network's members.

broadly in order to guarantee fair trials and secure justice.

The Innocence Network files this brief to underscore that it is especially important for the Court to reject the limitation of *Brady* reflected in the District of Columbia Court of Appeals's ruling. The Innocence Network's extensive experience with wrongful convictions and exonerations shows that evidence of an alternative perpetrator is quintessentially exculpatory and material under *Brady* in a case lacking strong physical evidence of a defendant's guilt, because access to such evidence undoubtedly is critical to guaranteeing a fair trial. In addition, a *Brady* analysis properly considers all available facts, including information materializing post-trial, when evaluating the materiality of evidence withheld pre-trial.

## SUMMARY OF ARGUMENT

Petitioners were convicted of the 1984 robbery, sodomy, and murder of Mrs. Catherine Fuller in Washington, D.C. After petitioners learned years later that prosecutors had withheld exculpatory evidence in their possession pre-trial—including evidence pointing to two other suspects—petitioners sought relief under *Brady*. The court below denied post-conviction relief.

This Court should reverse the judgment of the court below and take the opportunity to instruct lower courts on the correct application of the *Brady* materiality analysis. At a minimum, *Brady* presumptively requires prosecutors to disclose alternative-perpetrator evidence, which is crucial to developing a complete defense and which has been considered material evidence since the *Brady* decision itself. *Brady* also obligates courts to consider all available information in

analyzing the materiality of undisclosed evidence, because post-conviction events often bear directly on the importance of undisclosed evidence, and neither truth nor justice will be advanced by disregarding such facts.

**I.** *Brady* seeks to ensure that criminal trials are just and the resulting verdicts worthy of confidence. *United States v. Bagley*, 473 U.S. 667, 675, 682 (1985); *United States v. Agurs*, 427 U.S. 97, 112 (1976). Studies—including those conducted by Innocence Network members—confirm that *Brady* violations are strongly correlated with wrongful convictions. A *Brady* violation has especially severe impact on a defendant when the withheld exculpatory material is evidence of an alternative perpetrator, as in this case. Research shows such evidence is often crucial to a defendant's ability to present a complete narrative that could influence a jury's deliberations over whether the prosecution has met its burden of proving guilt beyond a reasonable doubt. Wrongful convictions not only deprive an individual of life and liberty without justification, but also have a devastating impact on the very fabric of our civil society, which depends on continued confidence in the justice system. Accordingly, this Court should reject the lower court's limitation on what can be considered when evaluating materiality under *Brady*.

**II.** This Court should hold that alternative-perpetrator evidence is presumptively material under *Brady*, absent strong physical evidence of a defendant's guilt. Evidence of an alternative perpetrator is fundamental to a defendant's ability to develop challenges to whether the prosecution has proven its case. Suppression of alternative-perpetrator evidence here violated *Brady* and warrants vacating petitioners' convictions.

The D.C. Court of Appeals's interpretation of *Brady*—to permit suppression of alternative-perpetrator evidence when *no* physical evidence connects a defendant to the crime—cannot be squared with this Court's teachings. Alternative-perpetrator evidence has been at the center of the development of the *Brady* doctrine, *see Brady*, 373 U.S. at 84; *Kyles v. Whitley*, 514 U.S. 419, 432-54 (1995), and this Court has found such evidence critical to a defendant's ability to present a complete defense, *see, e.g.*, *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). This Court should clearly state, as many lower courts have already done, that alternative-perpetrator evidence is presumptively material, at least in the absence of strong physical evidence of the defendant's guilt.

The decision below deviates from these precedents. It blessed the withholding of evidence pertaining to *two* alternative perpetrators in a case that was devoid of *any* inculpatory physical evidence, and which "easily could have gone the other way." A1751. In this instance, the withholding of that evidence rendered the trial unfair because it obviously had the potential to affect the defense's preparation and presentation of the case to the jury.

**III.** The court below further diverged from *Brady* and this Court's precedents by flatly refusing to consider relevant post-conviction events when assessing whether the evidence the prosecutor concededly suppressed pre-trial was material under the circumstances. The objectives of truth-seeking and fairness that animate *Brady* are served by considering *all* information that bears on the materiality of the suppressed evidence. Nothing in the *Brady* "totality of the circumstances" inquiry suggests that the materiality analysis must be limited by an arbitrary

timeframe or date cutoff. *Bagley*, 473 U.S. at 683. Thus, this Court and others have factored post-conviction information into their evaluation of *Brady* materiality.

Prosecutors in practice already consider future events—most fundamentally, how the trial might unfold—in assessing the materiality of evidence. *Agurs*, 427 U.S. at 108; *Kyles*, 514 U.S. at 438-39. *Brady*'s legal construct that prosecutors know and recognize material evidence when they see it (or when other members of law enforcement see it) is entirely consistent with assuming prosecutors know which close evidence might turn out to satisfy the *Brady* materiality standard post-trial. Nor will prosecutors face personal or professional disapprobation if it is later determined that withheld evidence is actually material—the purpose of *Brady* is not to pillory prosecutors, but to ensure the finding of guilt is as just and accurate as humanly possible. *Agurs*, 427 U.S. at 110; *see also Brady*, 373 U.S. at 87. Experience shows that reviewing courts can administer this holistic standard without difficulty, and, by considering all available information, courts may be saved from making hair-splitting judgments in close cases.

## ARGUMENT

### I. *BRADY* DISCLOSURES ARE FUNDAMENTAL TO A CRIMINAL TRIAL'S TRUTH-SEEKING FUNCTION AND TO THE PREVENTION OF WRONGFUL CONVICTIONS.

The job of prosecutor has traditionally attracted diligent public servants who pursue justice by following their *Brady* obligations. Nonetheless, when the government withholds exculpatory evidence, as does happen, that is a leading cause of convictions of the

innocent. The *Brady* disclosure obligation helps to promote fair trials that produce verdicts worthy of public confidence. *Brady* helps to minimize the risk that an individual's life will be forever altered by the manifest injustice of a wrongful conviction.

### A. *Brady*'s Materiality Test Must Be Applied with the Objective of Promoting Fair Trials that Reach Verdicts Worthy of Confidence.

The overarching purpose of *Brady* is "to ensure that a miscarriage of justice does not occur." *Bagley*, 473 U.S. at 675. Accordingly, "[t]he proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt." *Agurs*, 427 U.S. at 112. Although "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different," the Court has underscored that "[a] 'reasonable probability' is a probability sufficient to *undermine confidence in the outcome*." *Bagley*, 473 U.S. at 682 (emphasis added). That is, faith in the integrity of the verdict—which depends on the completeness of the evidentiary record available for presentation to the jury—is the touchstone for the *Brady* rule.

The truth-and-justice-seeking function that animates *Brady* would be severely jeopardized if the Court were to narrow *Brady* as the court below did—(i) permitting courts to find *Brady* satisfied where evidence of alternative perpetrators, available prior to trial, was not disclosed despite the *absence* of strong physical evidence inculpating defendants, and (ii) preventing courts from taking into account *all* of the facts available at the time the conviction is reviewed, in-

cluding facts materializing post-trial, when determining the materiality of withheld information. This Court should reject those crabbed rules and reinforce that the *Brady* doctrine is designed to ensure the fundamental fairness of the trial.

Our adversarial system of criminal justice depends on the effective functioning of the *Brady* doctrine. Strict compliance with *Brady*'s disclosure rule helps mitigate the unavoidable information imbalance between government investigators and criminal defendants, thereby affording the accused a fair opportunity to present a complete defense to the jury. *See Brady*, 373 U.S. at 87. Moreover, a clear standard tending towards over-disclosure in close cases alleviates "the natural condition of cognitive bias" that affects a prosecutor, who—"convinced in the justice of his indictment"—"may be unable to put himself in the defense lawyer's position" and "cannot know the potential uses the defense lawyer may have for the evidence." Thomas P. Sullivan & Maurice Possley, *The Chronic Failure to Discipline Prosecutors for Misconduct: Proposals for Reform*, 105 J. CRIM. L. & CRIMINOLOGY 881, 915-16 (2015) (collecting authority).

The important upstream impact of the *Brady* rule—*viz.*, as a guiding principle for prosecutors making pre-trial decisions about what to turn over—is only amplified downstream, in the reviewing court. That is where any disclosure errors born of prosecutor bias in the strength of the state's narrative can and should be corrected. *See ibid.* Although this Court has never endorsed an "open-file policy," neither has it permitted *Brady* to devolve into a sufficiency-of-the-evidence rule; *Brady* would be stripped of its vitality if the mere existence of *some* inculpatory evidence in

the post-conviction record sufficed to overcome a *Brady* challenge. The key consideration is not, as the D.C. Court of Appeals wrongly assumed, whether the jury could have reached a guilty verdict had the evidence been disclosed to the defense. Rather, the *Brady* analysis asks whether a due-process violation occurred when the jury was allowed to deliberate without the defense's getting access to, and the right to make use of, the exculpatory evidence the government possesses.

### B. The Proper Application of *Brady* Is Essential To Avoid Wrongful Convictions.

When the government withholds material, exculpatory evidence—whether knowingly or inadvertently—it denies the defendant a fair trial and risks convicting an innocent. Given the large number of prosecutions nationwide, it only takes *Brady* violations in a small proportion to infect a great many cases.

Studies by Innocence Network members have revealed an undeniable correlation between *Brady* violations and wrongful convictions. *See, e.g.*, *Government Misconduct*, INNOCENCE PROJECT OF MINNESOTA, http://ipmn.org/causes-and-remedies-of-wrongful-convictions/government-misconduct (last visited February 2, 2017) (finding *Brady* violations in 37% of 74 wrongful convictions). The Innocence Network is not alone in identifying and quantifying this alarming correlation. Another study compared wrongful convictions with "near misses"—factually-innocent indicted individuals who were acquitted or against whom charges were dropped—to determine "how the criminal justice system can and does 'get it right' when faced with an innocent defendant." Jon B. Gould et al., *Predicting Erroneous Convictions*, 99

IOWA L. REV. 471, 477, 482 (2014). The study found *Brady* violations to be statistically significant predictors of wrongful convictions, "severely harm[ing] the system's ability to self-correct from initial errors" that resulted in indictment of an innocent. *Id.* at 501. A substantial body of empirical research has reached the same conclusion.[3]

That *Brady* violations correlate to wrongful convictions is not surprising. It has long been recognized that withholding exculpatory evidence may impair the "preparation or presentation of the defendant's case." *Bagley*, 473 U.S. at 683. This information disparity is especially damaging to the defense when the undisclosed evidence relates to an alternative perpetrator. Studies analyzing juror behavior show that jurors are more likely to credit a defendant's version of events if presented with a complete and coherent narrative—

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[3] *See, e.g.*, Lissa Griffin, *Innocence and the Suppression of Exculpatory Evidence by Prosecutors*, in Controversies in Innocence Cases in America 79 (Sarah Lucy Cooper ed. 2014) (noting that the second-most "frequent basis for wrongful convictions has been prosecutorial suppression of exculpatory evidence"); N.Y.S. BAR ASS'N, Task Force on Wrongful Convictions, Final Report of the N.Y. State Bar Association's Task Force on Wrongful Convictions 19, 24-26 (2009) (identifying *Brady* violations as among the causes of over 50% of fifty-three wrongful convictions and compiling examples of violations); Bennett L. Gershman, *Reflections on* Brady v. Maryland, 47 S. TEX. L. REV. 685, 686 & n.8 (2006) (cataloging sources finding that "hundreds of convictions have been reversed because of the prosecutor's suppression of exculpatory evidence"); Peter A. Joy, *The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System*, 2006 WIS. L. REV. 399, 403 n.20, 425 n.134 (2006) (citing studies linking *Brady* violations to wrongful convictions); James S. Liebman et al., *Capital Attrition: Error Rates in Capital Cases, 1973-1995*, 78 TEX. L. REV. 1839, 1850, 1864 n.79 (2000) (finding *Brady* violations were one of "the two most common errors" leading to reversals of death sentences).

including, in particular, evidence of who other than the defendant may have committed the crime—to counter the narrative presented by the prosecution. *See* John H. Blume et al., *Every Juror Wants a Story: Narrative Relevance, Third Party Guilt, and the Right to Present a Defense*, 44 AM. CRIM. L. REV. 1069, 1087-91 (2007). "Jury research has long established that jurors tend to base decisions on the presentation of a persuasive story, the strength of which is judged in part on the completeness of key story elements." David S. Schwartz & Chelsey B. Metcalf, *Disfavored Treatment of Third-Party Guilt Evidence*, 2016 WIS. L. REV. 337, 341 (2016) (highlighting the value of alternative-perpetrator evidence).

*Brady* violations upend lives. A few examples of *Brady*'s power illustrate the risks of limiting the doctrine.

- Michael Morton served over twenty-four years in prison for murdering his wife before being exonerated. At his trial, prosecutors withheld critical exculpatory evidence, including his son's eyewitness account of the crime, his neighbors' statements that on the day of the crime another man had parked behind the Mortons' home and walked into the woods nearby, and that someone in another city attempted to use Mrs. Morton's credit card after her murder. The withheld evidence pointed to a man who, after Mr. Morton's conviction, committed another murder very similar to Mrs. Morton's. *Michael Morton*, INNOCENCE PROJECT, http://www.innocenceproject.org/cases/michael-morton (last visited February 2, 2017).
- Jerry Watkins served thirteen years for abducting, raping, and murdering an eleven-year-old girl before being exonerated. He was convicted although

no physical evidence connected him to the crime. After trial, he learned that prosecutors had investigated other suspects and had withheld an eyewitness's account of the abduction that pointed to a different suspect. *Jerry Watkins*, INNOCENCE PROJECT, http://www.innocenceproject.org/cases/jerry-watkins (last visited February 2, 2017).

- Dwayne Provience served eight years in prison for murder before he was able to prove his innocence. The prosecution failed to disclose a note from police files indicating that an alternative perpetrator might have committed the crime. The note showed that—one month after the murder for which Provience was convicted—another murder occurred in the neighborhood, with the apparent motive of preventing the second victim from offering evidence exculpating Provience and inculpating the alternative perpetrator. *Provience v. City of Detroit*, 529 F. App'x 661, 666-67 (6th Cir. 2013) (denying qualified immunity and finding that the note was "clearly material exculpatory evidence").

These are but three illustrations of where actually innocent defendants were convicted after the prosecutor withheld exculpatory alternative-perpetrator evidence. The consequences of years unjustly spent in prison can never be erased, nor can the harm of a wrongful conviction ever truly be corrected. Adrian T. Grounds, *Understanding the Effects of Wrongful Imprisonment*, 32 CRIME & JUST. 1, 1-3 (2005).

Moreover, faith in our justice system is critical to a just and ordered civil society. Yet wrongful convictions erode that confidence. In one study, 75% of those surveyed believed wrongful convictions occur occasionally or frequently, and 57% responded that wrongful convictions happen frequently enough to justify

major changes in how criminal suspects are prosecuted. *See, e.g.*, Marvin Zalman et al., *Citizens' Attitudes Toward Wrongful Convictions*, 37 CRIM. JUST. R. 51, 57, 60 (2012). Holding that *Brady*'s materiality standard recognizes the special power of alternative-perpetrator evidence will foster confidence that the criminal justice system is fundamentally concerned with seeking truth, and engender "trust in the prosecutor as the representative of a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Kyles*, 514 U.S. at 439 (internal quotations and alterations omitted).

## II. INFORMATION ABOUT ALTERNATIVE PERPETRATORS IS CLASSIC EXCULPATORY EVIDENCE THAT IS MATERIAL ABSENT STRONG INCULPATORY PHYSICAL EVIDENCE.

Suppression of exculpatory information rises to the level of materiality under *Brady* when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U.S. at 435. In *Kyles*, as in *Brady* itself, this Court found that materiality standard satisfied when the government failed to disclose evidence relating to an alternative perpetrator.

The Court should take this opportunity to provide guidance that alternative-perpetrator evidence is presumptively material under *Brady*, at least where there is not strong physical evidence of a defendant's guilt. That rule would be consistent with this Court's cases holding that evidence relating to an alternative perpetrator is so often "critical" to a defendant's constitutional right to put on a defense that it may justify displacing state-law procedural rules limiting its admissibility. *See, e.g., Chambers v. Mississippi*, 410 U.S. 284 (1973). It would also comport with the pro-

disclosure approach followed by the many federal and state courts that have interpreted *Brady* to require disclosure of evidence of a plausible alternative perpetrator when the government lacks strong physical evidence inculpating a defendant.

In this case, concededly exculpatory evidence relating to two plausible alternative perpetrators was suppressed by the government *before the trial*. The prosecution knew that James McMillan was present at the scene of the crime (multiple witnesses confirmed it), had an object hidden under his coat (the object used to sodomize Mrs. Fuller was never found), was "acting suspiciously," and fled when police arrived. Pet'rs. Br. 19-20. The prosecution also was aware not only that McMillan lived in the neighborhood in which Mrs. Fuller was murdered, but that—mere weeks after Mrs. Fuller's murder, and before petitioners' trial—McMillan had violently assaulted and robbed two other middle-aged women in the neighborhood, crimes for which he was convicted and served time. *Ibid.* Unsurprisingly, McMillan was investigated as a suspect in the murder of Mrs. Fuller, and may have been interviewed by the lead prosecutor on the case. *Ibid.* Yet McMillan's identity, the witnesses confirming his suspicious behavior, and his series of attacks on women in the neighborhood were withheld from the defense.

Significant evidence about James Blue was also suppressed. Just three weeks after Mrs. Fuller's homicide, a witness told investigators that on the day of that murder James Blue had pulled a woman into an alley and beaten and killed her—but the government (inexplicably) never followed up on that statement. *Id.* at 18. Blue, who had previously committed crimes with similar characteristics, was released from prison

the very day Mrs. Fuller was killed. Shortly before petitioners' trial, Blue murdered the individual who had implicated him in the Fuller murder. Yet the prosecution apparently never breathed a word to the defense about Blue. *Ibid.*

This alternative-perpetrator evidence was not disclosed even though the prosecutors knew that the case record was devoid of inculpatory physical evidence or any other reliable indicia of petitioners' guilt, and replete with physical evidence incompatible with the government's group-attack theory of the crime. This Court should find that the withholding of alternative-perpetrator evidence here violated *Brady*; petitioners' convictions should be vacated.

### A. This Court Has Long Recognized that Evidence of an Alternative Perpetrator is Critical Exculpatory Evidence Necessary To Present A Complete Defense.

Evidence of alternative perpetrators has been of central importance to this Court's development of both the *Brady* doctrine and the right of a criminal defendant to present a complete defense and receive a fair trial.

Withheld alternative-perpetrator evidence was at issue in the very case that established the *Brady* doctrine. In *Brady v. Maryland*, Brady claimed that prosecutors had improperly suppressed admissions by Boblit, his companion, of having committed the actual killing. 373 U.S. at 84. This Court agreed, holding that suppression of such alternative-perpetrator evidence—no less than using perjured or false evidence—can render both the guilt and sentencing phase of a trial "unfair ... to the accused," in contravention of constitutional due process. *Id.* at 87.

More recently, in an opinion canvassing decades of *Brady* jurisprudence and establishing the leading framework for analyzing *Brady* claims, this Court again recognized the exculpatory force of alternative-perpetrator evidence. In *Kyles v. Whitley*, this Court held that the prosecution's withholding of evidence, including evidence pointing to Beanie, an alternative perpetrator, violated due process. *See* 514 U.S. at 432-41, 445-49, 453-54. The Court hypothesized that if evidence that Beanie had framed Kyles for the murder had been disclosed, the defense might have benefitted in at least three ways: presenting the evidence at trial "would have allowed the jury to infer that Beanie was anxious to see Kyles arrested"; Kyles would have been able to "attack[] the reliability of the investigation in failing even to consider Beanie's possible guilt"; and the evidence would have "magnified the effect on the jury of explaining how" Beanie knew to direct police to the location where incriminating physical evidence "happened to be recovered." *Id.* at 429, 445-47. The existence of other "inconclusive[]" physical evidence against the petitioner made no difference, because it would "hardly have amounted to overwhelming proof that Kyles was the murderer," a level of proof the prosecution bore the burden of establishing. *Id.* at 451, 453. The withheld evidence, including the alternative-perpetrator evidence, undermined confidence in the verdict.

Thus, from the inception of the *Brady* rule through the doctrine's evolution, this Court has recognized that alternative-perpetrator evidence is of paramount value to mounting an effective defense and lies at the heart of the prosecution's disclosure obligations under *Brady*. A defendant may use such evidence to uncover other witnesses and leads, to point

the jury towards the possibility of another's culpability, or even to call into question the reliability and thoroughness of the state's investigation. *See id.* at 429, 446-47. When such evidence is withheld, the state's "case [is] much stronger, and the defense case much weaker, than the full facts would have suggested." *Id.* at 429.

Outside of the *Brady* context too, this Court has recognized that a criminal defendant's right to a "'meaningful opportunity to present a complete defense'" often depends upon alternative-perpetrator evidence. *Holmes*, 547 U.S. at 324 (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). In defining that constitutional right, this Court has described alternative-perpetrator evidence as "relevant and material," and deemed such evidence so important that barring its admission at trial violates a defendant's right to "present [his] version of the facts" to the jury. *Washington v. Texas*, 388 U.S. 14, 19, 23 (1967). Thus, evidentiary rules mandating the exclusion of "critical evidence" of third-party guilt deny the defendant "a trial in accord with ... fundamental standards of due process" and "defeat the ends of justice." *Chambers*, 410 U.S. at 302; *see also Green v. Georgia*, 442 U.S. 95, 97 (1979) (per curiam) (characterizing alternative-perpetrator evidence as "highly relevant," and holding that its exclusion, under state hearsay rules, "constituted a violation of the Due Process Clause").

These cases led this Court most recently to the conclusion that a trial court cannot constitutionally exclude alternative-perpetrator evidence based on its pre-trial belief that "there is strong evidence of ... guilt." *See Holmes*, 547 U.S. at 324-26, 328-31. As the Court explained, "[j]ust because the prosecution's evidence, *if credited*, would provide strong support for a

guilty verdict, it does not follow that evidence of third-party guilt" may be excluded; "the strength of the prosecution's case cannot be assessed without making the sort of factual findings that have traditionally been reserved for the trier of fact." *Id.* at 330-31.

The *Holmes* line of cases is complementary authority that supports treating alternative-perpetrator evidence as presumptively material (absent strong inculpatory physical evidence). Under this Court's precedents, the fundamental right to present a complete defense is impaired—in violation of *Brady*—if evidence of alternative perpetrators is withheld in advance of trial.

### B. Alternative-Perpetrator Evidence Is Presumptively Material Under *Brady* Where Strong Inculpatory Physical Evidence Is Lacking.

Consistent with this Court's view, the federal courts of appeals and state high courts have long understood that alternative-perpetrator evidence is material under *Brady* in cases where physical evidence of the defendant's guilt is infirm.

Applying this Court's precedents in a case where "[n]o physical evidence tied" the defendant to the crime, the *en banc* Ninth Circuit held that "[w]ithholding knowledge of a second suspect conflicts with the Supreme Court's directive that 'the criminal trial, as distinct from the prosecutor's private deliberations, be preserved as the chosen forum for ascertaining the truth about criminal accusations.'" *United States v. Jernigan*, 492 F.3d 1050, 1056-57 (9th Cir. 2007) (en banc) (quoting *Kyles*, 514 U.S. at 440). Shortly thereafter, a panel of the Ninth Circuit—also in a case with "little physical evidence connecting" the defendant to

the crime—"recognized the principle that the government may not, consistent with *Brady*, suppress information that another person committed the crime for which the defendant is on trial." *Williams v. Ryan*, 623 F.3d 1258, 1266 (9th Cir. 2010).

In reaching that categorical conclusion, the *Williams* court noted that "evidence suggesting an alternate perpetrator is classic *Brady* material." *Id.* at 1265 (quotation marks omitted). Such information concerning a possible alternative suspect has the power to fundamentally change "the preparation or presentation of the defendant's case," *Bagley*, 473 U.S. at 683; if "disclosed to the defense," it would allow the defendant to contact other witnesses, highlight "inconsisten[cies] with the State's theory at trial," and also "point to an alternative suspect who may himself have been responsible for the brutal crime," *Williams*, 623 F.3d at 1265-66. Indeed, the disclosure rule regarding alternative-perpetrator evidence was, in the Ninth Circuit's view, so clearly established decades ago that "[a]ny reasonable police officer in 1984 would have understood that evidence potentially inculpating another person fell within *Brady*'s scope." *Carillo v. Cnty. of Los Angeles*, 798 F.3d 1210, 1226 (9th Cir. 2015), *cert. denied*, *Ditsch v. Carillo*, 136 S. Ct. 1671 (2016).

The Sixth Circuit has used similarly categorical language in holding that suppressing evidence of a "legitimate" alternative perpetrator violates *Brady* when the state's case lacks physical evidence. In companion cases where "[t]he state never discovered any physical evidence linking" either defendant to the crime, that court explained that "[o]n its face, the nondisclosure of the identities" of alternative perpetrators works "an egregious breach of the state's *Brady* obligations."

*Gumm v. Mitchell*, 775 F.3d 345, 364, 371 (6th Cir. 2014); *Bies v. Sheldon*, 775 F.3d 386, 400-01 (6th Cir. 2014). Although prosecutors are not "necessarily required to disclose every stray lead and anonymous tip," they "*must disclose* the existence of 'legitimate suspect[s]'...." *Gumm*, 775 F.3d at 364 (citations omitted, emphasis added); *Bies*, 775 F.3d at 400. Endorsing the Ninth Circuit's view that "[w]ithholding knowledge of a second suspect" cannot be squared with *Brady*, the court readily concluded that "the state's failure to turn over ... evidence implicating other individuals in the murder and calling into question the state's own account of the crime can 'reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" *Gumm*, 775 F.3d at 364, 373 (quoting *Kyles*, 514 U.S. at 435); *Bies*, 775 F.3d at 400, 403.

Other circuits have reached analogous conclusions. The Tenth Circuit, for example, has found alternative-perpetrator evidence material under *Brady* where prosecutors lack physical evidence of guilt, because such evidence "creates reasonable doubt" that the defendant committed the crime, and "in the hands of the defense, it could [be] used to uncover other leads and defense theories and to discredit the police investigation." *Bowen*, 799 F.2d at 612-13; *see also Banks v. Reynolds*, 54 F.3d 1508, 1517-18, 1521 (10th Cir. 1995); *Miller v. Angliker*, 848 F.2d 1312, 1314-15, 1322-23 (2d Cir. 1988). The Eighth Circuit has held that undisclosed alternative-perpetrator evidence was material even where the prosecution's case was strong. *Clemmons v. Delo*, 124 F.3d 944, 947, 951 (8th Cir. 1997). No federal court of appeals has held that alternative-perpetrator evidence is categorically immaterial in the absence of strong physical evidence of a defendant's guilt.

So, too, state high courts have held that withholding alternative-perpetrator evidence violates *Brady* in cases where strong physical evidence of the defendant's guilt is absent. These courts, like their federal counterparts, have explained that alternative-perpetrator evidence is "bedrock *Brady* material[]" which, if suppressed, justifies "'ordering new trials'" in cases where "physical evidence against the defendant is not as strong." *Floyd v. State*, 902 So.2d 775, 783-87 (Fla. 2005) (quotation marks omitted); *see also, e.g.*, *People v. Beaman*, 890 N.E.2d 500, 511-14 (Ill. 2008) (failing to disclose alternative-perpetrator evidence material where "tenuous" and "circumstantial" evidence against defendant was not "particularly strong evidence of his guilt"); *Harrington v. State*, 659 N.W.2d 509, 515, 524-25 (Iowa 2003) (concluding that alternative-suspect evidence would have been "the centerpiece of a consistent theme that the State was prosecuting the wrong person" where "physical evidence linking Harrington to the crime was minimal").

The approach taken by federal and state appellate courts reveals a consistent theme: suppression of alternative-perpetrator evidence is excused only in the narrow category of cases where there is either strong physical evidence of the defendant's guilt, or only minimal evidence pointing to a third party. *See, e.g.*, *Canales v. Stephens*, 765 F.3d 551, 575-76 (5th Cir. 2014) (finding suppression immaterial when defendant's "confessional letter describing the murder step-by-step" made other suspect "not a particularly plausible one"); *Smith v. Holtz*, 210 F.3d 186, 196, 198-99 (3d Cir. 2000) (noting "physical evidence ... inexorably tied" defendant to the crime); *Grube v. State*, 995 P.2d 794, 799 (Idaho 2000) (highlighting physical evidence inculpating defendant). In other words, those courts have adopted (nothing more than) the common-sense

exception that, although "*Brady* requires the prosecution to produce evidence that someone else may have committed the crime," it need not produce evidence where "the 'other suspects' ... were ephemeral." *Jarrell v. Balkcom*, 735 F.2d 1242, 1258 (11th Cir. 1984).

Petitioners' case does not come close to falling within that exception.

### C. The D.C. Court of Appeals's Interpretation and Application of *Brady* Violated Petitioners' Right To A Fair Trial, Rendering Their Guilty Verdicts Unworthy of Confidence.

This Court's cases, together with the circuit and state courts' application of those rulings, make two things clear. First, information about alternative perpetrators is material exculpatory evidence that must presumptively be disclosed unless there is strong physical evidence of a defendant's guilt. Second, the reason such alternative-perpetrator evidence is so indispensable is that confidence in a guilty verdict cannot be assured if the jury never had a chance to observe what defense counsel could have done with such information. Simply put, the disclosure of alternative-perpetrator information is likely to fundamentally change the course of a case, and justice suffers if such evidence is considered not material.

Had the D.C. Court of Appeals correctly applied those principles, it would have found that suppressed evidence implicating James McMillan and James Blue was material under *Brady*. McMillan was identified by multiple witnesses as fleeing the crime scene with something hidden under his coat, and had robbed and assaulted two other middle-aged women near the crime scene just weeks after Mrs. Fuller's murder.

Blue slaughtered a witness who told police that he had murdered a woman in an alley the day of Mrs. Fuller's homicide, a statement the prosecution never followed up on (let alone disclosed). Nonetheless, absent the evidence connecting those suspects to the crime scene, petitioners were unable to question the rigor of the government investigation or to present the jury with a counter-narrative in the form of an alternative-perpetrator theory to explain not only (i) why prosecutors lacked solid physical evidence of their guilt, but also (ii) why the only physical evidence prosecutors *did* have flatly contradicted the state's group-attack theory of the crime.

In these circumstances, the "exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and survive the crucible of meaningful adversarial testing." *Crane*, 476 U.S. at 690-91 (quotation marks omitted). Indeed, it is fanciful to say with confidence that the case would have unfolded the same way if the government had complied with its *Brady* obligations. "Even if the jury—armed with all of this new evidence—could have voted to convict [petitioners]," this Court should "have 'no confidence that it *would* have done so.'" *Wearry v. Cain*, 136 S.Ct. 1002, 1007 (2016) (per curiam) (citation omitted). The *Brady* inquiry manifestly "does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles*, 514 U.S. at 434.

This Court should, therefore, reverse the decision below based on the clear, administrable rule the lower courts have extrapolated from its *Brady* cases: alternative-perpetrator evidence is material under *Brady* absent strong physical evidence of a defendant's guilt.

Making that common-sense rule explicit would minimize the burden on prosecutors and judges by providing well-defined guidance in an area of law that has long been fraught with difficult judgment calls. *See, e.g.*, *Kyles*, 514 U.S. at 439-40. In particular, a rule of presumptive disclosure could help to resolve the tension inherent in a prosecutor's assessing the weaknesses of the state's case. Such a rule would enhance confidence in verdicts in two important ways. First, it would leave to defense counsel, not to the "prosecutor's private deliberations," the evaluation of how to use evidence pointing to alternative perpetrators. *Id.* at 440. Second, it would enable defendants to present a case that the jury is most likely to credit—a complete and coherent narrative that includes evidence of who other than the defendant might have committed the crime. *See* Blume, *supra*, at 1087-91; *see also*, *e.g.*, *Gumm*, 775 F.3d at 370-71 (noting disclosure of alternative-perpetrator evidence "would have provided a compelling counter-narrative to the state's theory of the case"); *Harrington*, 659 N.W.2d at 524-25 (finding it "more probable that the jury would have disregarded or at least doubted" testimony by a supposed accomplice "had there been a true alternative suspect"). "The defendant's ability to tell the right story—and to tell it completely"—is not only "a powerful influence on the outcome of a trial," but "central to the protection of his constitutional right to present a complete defense." Blume, *supra*, at 1091.

Holding that alternative-perpetrator evidence is material absent strong physical evidence of guilt also furthers the policy concerns undergirding the *Brady* doctrine and the sanctity of the fair-trial right that the rule is designed to protect. Where evidence is allowed to be withheld in such circumstances, it harms the integrity of guilty verdicts and undermines faith in

criminal convictions nationwide.

## III. COURTS SHOULD CONSIDER ALL AVAILABLE INFORMATION WHEN EVALUATING *BRADY* MATERIALITY.

In 1992, after petitioners' convictions, McMillan assaulted, sodomized, and murdered another woman in an alley just three blocks from where Mrs. Fuller was found. Pet'rs. Br. 20. This crime was strikingly similar to the brutal murder of Mrs. Fuller. An expert testified at petitioners' post-conviction hearing that sexual assaults with these characteristics are rare—which raises the obvious question whether McMillan, acting alone, committed both heinous murders. *Id.* at 23.

In deciding petitioners' *Brady* claim, however, the D.C. Court of Appeals refused to consider McMillan's 1992 crime. Instead, it announced a *per se* rule that information that post-dates a defendant's conviction is "not relevant to whether the government violated its *Brady* obligations" to a defendant and has "no bearing on the question of the materiality of any evidence that the government actually did withhold from the defense." App. to Pet. for Cert. 36a.

The *Brady* error here was manifest based on the evidence withheld before trial, even absent any consideration of post-conviction information. Nonetheless, under this Court's precedents, McMillan's 1992 crime bears on, and confirms, the materiality of evidence withheld from the petitioners, and should have been considered as part of the "totality of the circumstances" test for determining whether *Brady* was violated. *See Agurs*, 427 U.S. at 112; *Kyles*, 514 U.S. at

434, 440. When analyzing materiality properly, consideration of available post-conviction information is consistent with the animating principles of *Brady*.

### A. This Court Has Permitted the Consideration of Post-Trial Events In Determining Whether *Brady* Was Violated.

This Court has considered post-trial events that shed light on the materiality of undisclosed evidence. In *Wood v. Bartholomew*, this Court described post-trial events as the "best possible proof" of whether suppressed evidence was material under *Brady*, and summarily reversed because the circuit court had "disregarded" post-conviction testimony in its *Brady* analysis. 516 U.S. 1, 7-8 (1995). That post-conviction evidence, adduced years after the trial, consisted of testimony from counsel about how the undisclosed evidence might have impacted the trial. *Id.* Similarly, in *Kyles*, this Court found that post-conviction information, including the testimony of the prosecutor and the detective at petitioner's post-conviction hearing, "confirmed" the materiality of undisclosed evidence. 514 U.S. at 448. The post-conviction testimony called into question the integrity of the investigation, and suggested that an alternative perpetrator may have framed the defendant.

Consistent with *Wood* and *Kyles*, this Court should endorse the proposition that courts may consider post-conviction information for any purpose bearing on the materiality of withheld evidence. *Brady* always envisioned the materiality analysis as a holistic inquiry, without arbitrary or fixed limits on what could be evaluated. The reviewing court must assess the possibility of "any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case"

and whether "such effect might have occurred in light of the *totality of the circumstances*." *Bagley*, 473 U.S. at 683 (emphasis added). To that end, this Court has time and again reaffirmed the core principle that *Brady* materiality is a fact-intensive analysis that should take all available evidence into account. *See id.*; *Wood*, 516 U.S. at 7-8; *Kyles*, 514 U.S. at 434, 441 (evidence must be evaluated "cumulative[ly]"); *Wearry*, 136 S.Ct. at 1007 (finding error in considering materiality of evidence "in isolation rather than cumulatively").

No part of the *Brady* doctrine incorporates a rigid time limit on what can be considered in the materiality analysis. *Brady* seeks to "preserve the criminal trial ... as the chosen forum for ascertaining the truth about criminal accusations" and to ensure the "justice of the finding of guilt." *Kyles*, 514 U.S. at 440; *Agurs*, 427 U.S. at 112. There is nothing to be gained in evaluating the "truth about criminal accusations" or the "justice of the finding of guilt" if the post-conviction court shuts its eyes to events that bear directly on the materiality of undisclosed evidence based solely on a time limitation. In nfact, consideration of how post-trial information might bear on the significance of suppressed pre-trial facts actually *enhances* the truth-seeking function of a criminal trial. Either the information, considered with the whole case record, will reinforce that the trial was fair, or it will justify vacating a verdict that is unworthy of confidence.

Finally, there is "a significant practical difference between the pretrial decision of the prosecutor and the post-trial decision of the judge." *Agurs*, 427 U.S. at 108. The prosecutor must assess materiality pre-trial, with necessarily incomplete information about how the trial might unfold and with a necessarily skewed

outlook given his sponsorship of the indictment. *Agurs*, 427 U.S. at 108; *Kyles*, 514 U.S. at 438-39. The post-conviction court, on the other hand, has the benefit of a full trial and post-conviction record, including any directly relevant information that materializes years after the trial. *See Wood*, 516 U.S. at 7-8; *Kyles*, 514 U.S. at 448. In reversing the D.C. Court of Appeals's erroneous decision to the contrary, this Court should endorse the consideration of post-trial events in a *Brady* analysis, and encourage courts to weigh all available information when adjudicating materiality.

### B. Circuit Courts and State Courts Use Post-Conviction Events In Determining Whether *Brady* Was Violated.

Following this Court's precedents, multiple federal circuit courts have factored post-conviction information into their evaluation of *Brady* materiality. For example, the Ninth Circuit analyzed two declarations, executed years after the conviction, to determine the materiality of undisclosed evidence of an alternative perpetrator. *Williams*, 623 F.3d at 1265. In the court's view, the post-conviction information *confirmed* that those witnesses could in fact inculpate a third party and exculpate the petitioner. *Id.* at 1262-63, 67-68. Likewise, the Second Circuit considered post-conviction affidavits of eyewitnesses—who recanted their testimony after seeing suppressed evidence—and found that it was "likely that [the undisclosed evidence] would have had seismic impact," in part because it would have "furnished the defense with promising lines of inquiry." *Leka v. Portuondo*, 257 F.3d 89, 97, 106 (2d Cir. 2001). The Tenth Circuit has also looked to post-conviction testimony of trial counsel as a useful indicator of the materiality of the withheld evidence. *Banks*, 54 F.3d at 1520.

The Missouri and Iowa Supreme Courts have similarly considered post-conviction events to help gauge the materiality of undisclosed evidence. Relying on *Kyles*, the Missouri high court has specifically instructed courts reviewing "an alleged *Brady* violation" to "consider[] *all available evidence uncovered following the trial.*" *State ex rel. Griffin v. Denney*, 347 S.W.3d 73, 77-79 (Mo. 2001) (emphasis added) (citing *Kyles*, 514 U.S. at 448); *see also Woodworth v. Denney*, 396 S.W.3d 330, 338 (Mo. 2013). Applying that principle, the court found suppression of evidence that an alternative perpetrator possessed a weapon at the time of the crime material in light of a post-conviction confession implicating the alternative perpetrator. *Griffin*, 347 S.W.3d at 77-79. The Iowa Supreme Court considered a police officer's post-trial testimony that an alternative perpetrator was "the prime suspect" in an investigation as indicating the importance of withheld police reports chronicling the investigation and the likelihood that the defense strategy would have been different had those reports been disclosed. *Harrington*, 659 N.W.2d at 524.

Numerous federal circuit courts and state high courts have found post-conviction events useful for the difficult task of "reconstructing in a post-trial proceeding the course that the defense and the trial would have taken," had suppressed evidence been disclosed. *Bagley*, 473 U.S. at 683. The D.C. Court of Appeals stands alone in categorically barring consideration of such information. That aberrant decision should be reversed.

### C. Considering Post-Conviction Events In Determining Whether *Brady* Was Violated Is Workable For Prosecutors And Administrable For Courts.

Allowing courts to consider post-conviction events in determining materiality will advance the goals of *Brady*, without creating difficulties in practice. Prosecutors will carry on just as they do today, striving to assess the materiality of evidence using incomplete information, but with a stronger incentive to err on the side of over-disclosure. Courts will carry on as many already do, using post-conviction events that shed new light on undisclosed evidence to assist in *Brady* materiality analyses.

The Constitution requires prosecutors to make difficult pre-trial judgment calls regarding the potential materiality of exculpatory evidence, and to attempt to engage in the "totality of the circumstances" *Brady* analysis while only knowing a fraction of the relevant circumstances. "The significance of an item of evidence can seldom be predicted accurately until the entire record is complete." *Agurs*, 427 U.S. at 108. As a result, a prosecutor will always "be forced to make judgment calls about what would count as favorable evidence, owing to the very fact that the character of a piece of evidence as favorable will often turn on the context of the existing or potential evidentiary record." *Kyles*, 514 U.S. at 438-39; *see also* Daniel S. Medwed, Brady's *Bunch of Flaws*, 67 WASH & LEE L. REV. 1533, 1558 (2010) (noting prosecutors must make "an artificial, prospective assessment about how particular items of evidence fit within the jigsaw puzzle of a possible trial"). Even the most conscientious

prosecutor runs the risk of having a case unfold unexpectedly—which might portend a *Brady* violation—after electing to withhold certain evidence.

The fact that materiality is a moving target requiring some prediction on the part of prosecutors has never been accepted as a justification to narrow *Brady*. *See Kyles*, 514 U.S. at 439. *Brady* is premised not on a prosecutor's *actual* knowledge or the *known* effect of a piece of evidence on a case. Rather, when assessing the sufficiency of disclosure, the court assumes a prosecutor knows of exculpatory evidence possessed by members of his team, *Kyles*, 514 U.S. at 437-38, and "recognize[s] [the] significance" of exculpatory evidence he opts to withhold "even if he has actually overlooked it," *Agurs*, 427 U.S. at 110. The reviewing court passes no personal or professional judgment on the prosecutor who errs—"[i]f the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor." *Ibid*; *see also Brady*, 373 U.S. at 87. Thus, asking prosecutors to consider not only how evidence might play into a defense—but also how evidence might become amplified in light of subsequent events bearing on that information—does not, as the court below wrongly suggested, require prosecutors to "do the impossible and disclose evidence that does not yet exist." App. to Pet. for Cert. 36a; *see United States v. Diaz*, 176 F.3d 52, 107, 109 (2d Cir. 1999). Rather, it asks them to undertake a similar analysis to that which they already conduct.

Undoubtedly, this Court's endorsement of a rule allowing consideration of *all* available facts in analyzing materiality would encourage the prudent prosecutor to err on the side of disclosing information available pre-trial instead of "tacking too close to the wind."

*Kyles*, 514 U.S. at 439-40; *see also Agurs*, 427 U.S., at 108 ("[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure"). "This is as it should be." *Kyles*, 514 U.S. at 439. "The prudence of the careful prosecutor should not ... be discouraged." *Id.* at 440. The decision below encourages the opposite, however: It incentivizes prosecutors to amplify their chances of obtaining convictions by withholding exculpatory evidence and gambling that there will be no consequences post-conviction for failing to disclose evidence that, in hindsight, would have mattered to the preparation and presentation of the defense. *United States v. Olsen*, 737 F.3d 625, 633 (9th Cir. 2013) ("By raising the materiality bar impossibly high, the panel invites prosecutors to avert their gaze from exculpatory evidence, secure in the belief that, if it turns up after the defendant has been convicted, judges will dismiss the *Brady* violation as immaterial.") (Kozinski, J., dissenting from denial of rehearing en banc).

A true "totality of the circumstances" analysis of *Brady* materiality, taking into account post-conviction information, will also be administrable in the courts. The fact that a number of courts already follow this genuinely holistic approach provides the best evidence that all could feasibly do so. In fact, a contrary rule is likely to prove far more difficult to administer. The court would be put in the position of attempting to ignore post-conviction information that could significantly complement its assessment of how material to the defense directly-related (but undisclosed) evidence might have proven. That challenging task is neither advisable, nor consistent with the foundations of *Brady*. When the integrity of a guilty verdict is at

stake—which is the core concern of the *Brady* doctrine—arbitrary bright-line rules that promote nondisclosure have no place in this Court's jurisprudence.

## CONCLUSION

For the reasons stated above and in Petitioners' briefs, the judgment below should be reversed and the convictions should be vacated.

Respectfully submitted,

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## APPENDIX

The Innocence Network's member organizations include: the Actual Innocence Clinic at the University of Texas School of Law; After Innocence; Alaska Innocence Project; Arizona Justice Project; California Innocence Project; Center on Wrongful Convictions; Committee for Public Counsel Services Innocence Program; Connecticut Innocence Project/Post-conviction Unit; Duke Center for Criminal Justice & Professional Responsibility; Exoneration Initiative; George C. Cochran Mississippi Innocence Project; Georgia Innocence Project; Griffith University Innocence Project; Hawai'i Innocence Project; Idaho Innocence Project; Illinois Innocence Project; Innocence & Justice Project at the University of New Mexico School of Law; Innocence Project; Innocence Project Argentina; Innocence Project at UVA School of Law; Innocence Project London; Innocence Project of Minnesota; Innocence Project New Orleans; Innocence Project New Zealand; Innocence Project Northwest; Innocence Project of Florida; Innocence Project of Iowa; Innocence Project of Texas; Irish Innocence Project at Griffith College; Italy Innocence Project; Justicia Reinvindicada – Puerto Rico Innocence Project; Kentucky Innocence Project; Knoops' Innocence Project; Life After Innocence; Loyola Law School Project for the Innocent; Michigan Innocence Clinic; Michigan State Appellate Defender Office – Wrongful Conviction Units; Mid-Atlantic Innocence Project; Midwest Innocence Project; Montana Innocence Project; Nebraska Innocence Project; New England Innocence Project; New York Law School Post-Conviction Innocence Clinic; North Carolina Center on Actual Innocence; Northern California Innocence Project; Office of the Ohio Public

Defender, Wrongful Conviction Project; Ohio Innocence Project; Oklahoma Innocence Project; Oregon Innocence Project; Pennsylvania Innocence Project; Reinvestigation Project; Resurrection After Exoneration; Rocky Mountain Innocence Center; Sellenger Centre Criminal Justice Review Project; Taiwan Association for Innocence; The Association in Defence of the Wrongly Convicted; The Israeli Public Defender; Thurgood Marshall School of Law Innocence Project; University of Baltimore Innocence Project Clinic; University of British Columbia Innocence Project at the Allard School of Law; University of Miami Law Innocence Clinic; Wake Forest University Law School Innocence and Justice Clinic; West Virginia Innocence Project; Western Michigan University Cooley Law School Innocence Project; Wisconsin Innocence Project; Witness to Innocence; and Wrongful Conviction Clinic at Indiana University.